IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

CIVIL PETITION NO. 859 (S/S) OF 2004,

Mohan Chandra ……Petitioner.

Versus

State of Uttaranchal and others. ……..Respondents.

Sri Pankaj Mglani, learned counsel for the petitioner.
Sri Rakash Thapaliyal, leraned counsel for the respondent no. 2,3 and 5 to 7.

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, under Article 226 of the Constitution of India, the petitioner has sought mandamus directing the respondents not to retire the petitioner before the age of 60 years.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed as Assistant Store Keeper with Nagar Palika Parishad, Haridwar on 3.12.1977 under Section 70 of the U.P. Municipalities Act, 1916. Thereafter his services were regularized from the initial date of his joining i.e. 5.12.1977. Petitioner continued to work with Nagar Palika Parishad, Haridwar till 8.8.2002, whereafter Uttaranchal Jal Sansthan was created and petitioner's services were absorbed in the new body. The date of birth of the petitioner is 12.7.1946 and is completing 60 years on 11.7.2006. The petitioner was informed by the respondents vide letter dated 21.2.2002 (Copy Annexure 1-A) that he would get retired w.e.f. 31.7.2004 after completion of 58 years. The petitioner, aggrieved by the letter dated 21.2.2004, made a representation alleging that his age of superannuation is 60 years and not 58 years.

On which the respondent no.5 intimated the petitioner vide letter dated 28.6.2004 that since in compliance of the Government Order dated 13.2.1990 he has not opted for the superannuation at the age of 60 years as such he would retire on completion of 58 years. According to the petitioner the stand taken by the respondents is illegal and arbitrary for, as per the rules and G.O. the petitioner can only be retired at the age of 60 years. (Though in the writ petition the petitioner has relied on the notification dated 15.6.2002 regarding the age of superannuation but during arguments he did not press the reliance on the said notification).

3. A counter affidavit has been filed on behalf of the respondent no.2, 3, 5, 6 and 7 in which it has been admitted that initially the petitioner was appointed as Store Khalashi under Section 70 of the U.P. Municipalities Act 1916 and thereafter w.e.f. 1.10.1989 the services of the petitioner were confirmed on the said post. It is further stated in the counter affidavit that a Service Book (Copy Annexure CA- 1) of the petitioner was maintained by the Municipal Board which reveals that the petitioner was confirmed as Store Khalashi w.e.f. 1.10.1989 as such the petitioner has wrongly alleged that he has been regularized w.e.f. 5.12.1977. It is also admitted that after division of State of U.P., Uttaranchal Jal Sansthan came into existence w.e.f. 9.8.2002 and the petitioner's services were transferred and absorbed under Water Supply and Severage Scheme in the new body. Admitting the date of birth of the petitioner as 12.7.1946 it is stated in the couther affidavit that as per letter dated

18.6.2004 (copy Annexure CA-2) the petitioner had to retire on completion of 58 years as per the G.O. dated 13.2.1990 for the want of option for retirement at the age of 60 years. As to the notification dated 15.6.2004 it is stated that the said notification pertains to the Government servants and not to the petitioner. Lastly it is stated that as per Section 31 of U.P. Water Supply and Severage Act 1975 under which the Successor department is created it is provided that the employees would be governed under the regulations of the parent department till the new rules are framed by the Successor department and Municipal Board, Haridwar has sent communication to retire the petitioner at the age of 58 years.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with annexure annexed thereto.

5. The short question for consideration before this court is whether the age of retirement of the petitioner, as per the rules and Government Orders, is 60 years as alleged by the petitioner and not 58 years on which the petitioner was noticed to retire by the respondent.

6. Admittedly the petitioner was appointed as Assistant Store Keeper/Store Khalashi w.e.f. 5.12.1977 in Nagar Palika Parishad Haridwar and thereafter admittedly he was confirmed on the said post before creation of Uttaranchal Jal Sansthan. It is also not disputed that the services of the petitioner were transferred from Municipal Board Haridwar to Uttaranchal Jal Sansthan w.e.f.

9.8.2002. It is also not denied that the petitioner's date of birth is 12.7.1946. The only point of dispute is whether the petitioner, as per the service conditions, has to retire at the age of 60 years and not 58 years for which he was noticed by letter dated 21.2.2004 (Copy Annexure 1-A). Before further discussions it is pertinent to mention here that in para 10 of the counter affidavit it is stated that " As per section 31 of the U.P. Water Supply and Severage Act 1975 there is the rules and regulation prevailing in the parent department will prevail same and so far as the present case is concerned till date the service rules has not yet been framed……" Here learned counsel for the petitioner drew my attention to rule 3 of Retention and Retirement of Servants of Municipal Boards Regulations, 1965 which reads as under:

> *"3(1) Subject to the provisions of sub-regulation (2), the age of retirement from service of all servants of all Municipal Boards below the age of sixty years on June 30, 1964, on appointed thereafter, shall be sixty years beyond which no one shall ordinarily be retained in the service of the municipal Boards.*
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> *(2) The Appointing Authority may require a servant to retire on his attaining the age of 58 years on three month's notice, if the servant concerned is physical unfit or is inefficient:*

Provided that noting in this sub-regulations shall apply to those servants of the Municipal Board who were fifty years of age or above on December 31, 1955."

7. In view of the contents of para 10 of the counter affidavit read with aforesaid rule it is clear that the age of retirement of the petitioner is 60 years and not 58 years as noticed by letter dated 21.2.2004 (Copy Annexure 1-A)

8. Learned counsel for the respondents drew my attention to the letter dated 18.6.2004 (Annexure CA-2) which has been sent by the Executive Officer of Nagar Palika Parishad Haridwar (Uttaranchal) to the Executive Engineer of Uttaranchal Jal Sansthan and argued that as per information received from the parent department of the petitioner he had to retire at the age of 58 years. I have gone through the said letter and its contents are as under:

"उपरोक्त विषयक आपके पत्र सं0 354/ अधिष्ठान हरिद्वार /04 – 05 दिनांक 1–6–2004 के सन्दर्भ में अवगत कराना है कि शासनादेष सं0 वे0 आर0 2–315/सीमा0 नि0/3/89 दिनांक 13–02–1990 के पृष्ठ सं0 64 प्रस्तर 4–11समता समिति की रिपोर्ट के अनुसार शासनादेष जारी होने के उपरान्त भर्ती किये गये स्थानीय निकाय के कर्मचारियों की अधिवर्षता आयु 58 वर्ष ही रखी जाये।

अतः आप विभाग में लागू नियमों व शासनादेषें के अनुसार अधिवर्षता आयु के अनुसार अपने कर्मचारियों को निर्देषित करने का कष्ट करें।"

9. The above letter appears to have been obtained after the impugned letter dated 21.2.2004 has already been noticed to the petitioner. The information given by the parent department to the respondents as above relies on para 4 to 11 of the G.O. dated

13.2.1990 and makes it clear that the persons appointed after the date of the G.O. will retire at the age of 58 years. Admittedly the petitioner is not a person who was appointed after 13.2.1990. In the counter affidavit it is clearly admitted that the petitioner was initially appointed on 5.12.1977 and confirmed in service on 1.10.1989. As such in view of the fact the petitioner is appointed prior to 13.2.1990, he is not the person who can be said to be covered by the aforesaid letter dated 18.6.2004 (Annexure CA-2) for the purposes of retirement at the age 58 years. Here this court feels necessary to refer annexure RA-2 to the rejoinder affidavit filed by the petitioner which contains para 4. 10 and para 4. 11 of the Samta Samiti Report referred in G.O. dated 13.2.1990 and reads as under:

> "4–10:– अभी तक स्थानीय निकाय के कर्मचारियों के तिपय वेतन मान प्रारम्भ में कुछ कम होने के कारण यह प्रतीत होता है कि जिला परिषद को छोड़कर अन्य सभी स्थानीय निकायों में सेवा निवृत्ति की आयु 60 वर्ष है। जिला परिषद में वेतन समुह के कुछ कर्मचारियों की सेवा निवृत्ति की आयु 60 वर्ष है। और शेष सभी की सेवा निवृत्ति की आयु 58 वर्ष है।
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> इस बिन्दु पर विभिन्न संघों के प्रतिनिधियों का यह कहना है कि सेवा निवृत्ति की आयु 60 वर्ष होते हुये भी 10 वेतनमान ऐसे हैं जो स्थानीय निकाय एवं कर्मचारियों के लिये एक समान हैं यह भी कहा गया कि कम न्यूनतम वाले वेतनमानों में प्रारम्भिक स्तर पर कम वेतन मिलने के कारण पुनरीक्षण वेतनमानें में भी उनका वेतन कम ही निर्धारित होगा।
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> 4–11:– समता समिति यह न्यायोचित समझती है कि भविष्य के लिये स्थानीय निकायें के सभी श्रेणी के कर्मचारियों की भांति 58 वर्ष होनी चहिये और यह संस्तुति करती है कि जिस तिथि में पुनरीक्षित वेतनमान लागू करने का शासनादेष जारी हो उसके बाद भर्ती किये जाने वाले स्थानीय निकाय कर्मचारियों की अधिवर्षता आयु 58 वर्ष ही रखी जाये।श

10. From the aforesaid para of the Samiti report and also as per the G.O. dated 13.2.1990 only those employees were to retire at the age of 58 years who were appointed after the G.O. dated 13.2.1990 is issued.

11. On behalf of the respondents my attention was also drawn to para 9 of the G.O. dated 13.2.1990 (Copy Annexure CA-3) to the counter affidavit and it is submitted that the Class-IV employees were to retire at the age 58 years except those who has opted otherwise. The careful reading of the said G.O. shows that this para-9 only refers to procedure of calculation for the revision of pay of the employees who have opted for their retirement at the age 58 years. It does not provide as to when a person has to retire.

12. Lastly it is argued by the learned counsel for the respondents that the petitioner has relied the case on the notification dated 15.6.2002 which applies only to the Government servants regarding their enhancement of age retirement from 58 years to 60 years. Learned counsel for the petitioner conceded it and submitted that he does not press his case on that ground.

13. In view of the above discussions particularly the rule 3 of the Retention and Retirement of Servants on Municipal Boards Regulations, 1965 and para 4.10 and 4. 11 of G.O. dated 13.2.1990 as quoted above the age of retirement of the petitioner comes out to be 60 years and not 58 years.

14. Accordingly the writ petition deserves and is allowed. The petitioner shall continue in service till he attains the age of 60 years

i.e. 11.7.2006 and he shall not be treated to have retired on 11.7.2004. No order as to costs.

(Prafulla C. Pant, J.)

Dt.29.09.2004
P.Bandhavakar